

**REMARKS**

Claims 1 and 2 are amended and new claims 5-6 are added. Support is found, for example, at page 19, lines 2-11, Examples 1, 5, 6, 7 and 10, table 5 and the original claims. No new matter is presented.

**I. Response to Claim Rejection under 35 U.S.C. § 103**

Claims 1-4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuchs (WO 01/01789) in view of Emoto (U.S. 6,458,395).

Claims 1 and 2 are amended herein.

The present invention is directed to a gel composition containing protein and calcium in high concentrations, with a refreshing acidic pH.

In the prior art, when compositions containing protein in high concentrations are adjusted to have a refreshing acidic pH, like known jelly drinks, the compositions sometimes do not form a uniform gel due to protein coagulation, which results in a rough, coarse texture and reduced palatability.

Further, compositions containing calcium in a high concentration have a high buffering effect, and require large amounts of organic acids to move their pH into the acidic range, therefore giving the composition a strong acidic taste.

In contrast, the composition of the present invention contains protein and calcium in high concentrations, but has a refreshing taste and is in the form of a soft gel suitable for eating and drinking.

In order to achieve the excellent effects of the present invention, it is important to contain agar in an amount of 0.1- 1 wt% in combination with guar gum or gellan gum in an amount of 0.05 to about 0.3 wt%.

The cited references do not teach or suggest these features of the present invention.

Fuchs does not teach the addition of agar to the composition, even to contain a gelling agent.

Fuchs already employs gelled protein to obtain a gelling composition; thus a person skilled in the art would not add further gelling agents to the composition, even in view of Emoto.

Further, there is no apparent reason to specifically select agar among the gelling agents of Emoto. Emoto describes various gelling agents, including cation-reactive gelling agents. However, as described in the present specification, when using generally used cation-reactive gelling agents such as gellan gum and carrageenan, it is difficult to gelate compositions containing high concentrations of protein and calcium (see page 17, paragraph 3). There is no teaching or suggestion in Emoto regarding suitable gelling agents for compositions containing high concentrations of protein and calcium.

Additionally, the combination of agar with guar gum or gellan gum is not obvious.

Emoto states that the gelling agents can be used singly or in combination (paragraph 5, lines 25-26), but no specific combination is taught in the reference.

In contrast, the combination of agar and guar gum or agar and gellan gum can achieve excellent mouth feel (texture; see page 18, line 24 to page 19, line 4 and Table 4). Such an advantageous effect of the present invention would not have been expected even considering the state of the art because, as described above, when using general common gelling agents such as gellan gum, it is difficult to gelate compositions containing high concentrations of protein and calcium (see page 17, paragraph 3 of the specification). Thus, the present invention is not rendered obvious by the cited references, whether taken alone or in combination.

Accordingly, Applicants respectfully request withdrawal of the §103 obviousness rejection.

## **II. Response to Obviousness-Type Double Patenting Rejection**

Claims 1-4 are provisionally rejected on the ground of non-statutory obviousness-type double patenting rejection over claims 1-7 of co-pending Application No. 10/521,170 (U.S. Pub. No. 2005/0260322).

Applicants defer responding to the provisional obviousness-type double patenting rejection.

Applicants additionally wish to point out that the Examiner's statements regarding 35 U.S.C. § 102(e), (f) or (g) do not apply in this case. First, the co-pending application does not qualify as prior art under 35 U.S.C. § 102(e) because the earliest effective filing date of the '170 application for prior art purposes is January 14, 2005 (which is after the effective filing date of the present application of September 22, 2003) since the international filing date cannot be relied on because the PCT application was not published in English. See MPEP §2136.03(II). Further, there is no indication that 35 U.S.C. § 102(f) or (g) apply.

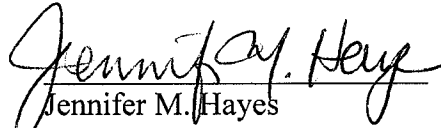
Accordingly, Applicants respectfully request withdrawal of the rejection.

## **III. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

  
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